

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 36 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and sd/-

MR.JUSTICE M.C.PATEL sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? yes

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy
of the judgement?

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?
2 to 5 No

COMMISSIONER OF INCOME TAX

Versus

ELECON ENGINEERING CO. LTD.

Appearance:

MR.P.G.DESAI WITH MR MANISH R BHATT for Petitioner

MR RK PATEL AND MR.B.D.KARIA for Respondent.

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE M.C.PATEL

Date of decision: 10/08/98

ORAL JUDGEMENT (Per C.K.Thakkar,J.):

The following question is referred by the Income
Tax Appellate Tribunal for the opinion of this Court:

"Whether on the facts and in the circumstances of

the case the Tribunal was right in law in coming to the conclusion that the Commissioner of Income-tax had no jurisdiction to revise the order under section 263 of the Income-tax Act as the assessment by the I.T.O. was made after receiving the directions of the I.A.C. under section 144B of the Act?"

The proceedings arose in connection with an order passed by the Commissioner of Income Tax (Appeals) under Section 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). In course of assessment proceedings for the Assessment Year 1976-77, the ITO allowed deduction of certain amounts in computing total income. Certain allowances were claimed which were granted by the ITO. The Commissioner exercised the revisional powers under Section 263 of the Act, set aside the assessment made by the ITO and directed him to re-examine the question relating to the method of accounting adopted by the assessee.

Before the Tribunal, a preliminary contention was raised on behalf of the assessee that the Commissioner had no jurisdiction to invoke the provisions of Section 263 of the Act in respect of assessment order made by the ITO with the previous approval of I.A.C. under Section 144B of the Act. Since preliminary objection related to maintainability of appeal, the Tribunal thought it fit to decide on that question without entering into merits of the matter. The Tribunal following an earlier decision rendered by Special Bench of the Tribunal in East Coast Marine Products (P) Ltd. vs. ITO (1983), I.T.D., 73, held that the Commissioner had no jurisdiction to revise an order of assessment after reference to I.A.C. under section 144B of the Act by the ITO. According to the Tribunal, in East Coast Marine Products (P) Ltd., a similar contention was advanced and the Tribunal upheld it observing that the principle of merger would apply to such orders. Hence, once an order was passed under section 144B of the Act, revisional powers were not available.

Mr.P.G. Desai, learned Counsel for the revenue, contended that the view taken by the Tribunal was contrary to decisions rendered by several High Courts. For that, he drew our attention to various decisions. In TORSON PRODUCTS LTD. v. COMMISSIONER OF INCOME-TAX, 173 ITR, 611, a similar question arose before the High Court of Andhra Pradesh. Interpreting the provisions of Sections 144B and 263 of the Act, the Court held that in spite of the directions issued by I.A.C. to ITO under

Section 144B of the Act, the order passed by the ITO continues to be one passed by him and was subject to revisional jurisdiction of the Commissioner.

Other High Courts are also of the same view.
(See CIT v. Vithal Textiles (1989) 175 ITR, 629; CIT v. Dulichand Bhatia (1989) 175 ITR, 634; CIT v. Usharani Bhatia (1989) 176 ITR 542; CIT v. Satishumar and Co. (1990) 181 ITR 57; CIT v. East Coast Marine Products (P) Ltd. (1990) 181 ITR 314; CIT v. Gangaram Mohanlal Mittal & Sons (1990) 181 ITR 392; Premier Cable Co. Ltd. v. CIT (1992) 193 ITR 719 and CIT v. Vincentian Orissa Society (1992) 194 ITR 743).

It was further submitted that so far as the Tribunal's decision in East Coast Marine Products (P) Ltd. is concerned, the revenue approached the High Court of Andhra Pradesh and the decision rendered by the Special Bench of the Tribunal was reversed in Commissioner of Income Tax vs. East Coast Marine Products (P) Ltd. and another, (1990) 181 ITR, 314 (AP). It was observed that where the Income Tax Officer passed an order after receiving directions from the Inspecting Assistant Commissioner under Section 144B of the Act, the nature of the order would not change and it would still remain an order passed by ITO and the Commissioner could revise it. Regarding Explanation which was added in the year 1984, the High Court observed that it was really "clarificatory" in nature and even without such an explanatory clause, the legal position would be the same.

In view of the settled legal position, in our opinion, the question referred to us must be answered in the negative, i.e. against the assessee and in favour of the revenue. The reference is accordingly disposed of. No order as to costs.
